

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIAN O'TOOLE,	)	
Plaintiff	)	C.A. No. 07 - 590
	)	
v.	)	Judge Nora Barry Fischer
	)	
JEFFREY BEARD, DEPARTMENT	)	
OF CORRECTIONS; SUP. HARRY	)	
WILSON, SCI-FAYETTE; PRISON	)	
HEALTH SERVICES, INC.; AND	)	
CHRIS MEYER,	)	
Defendants.	)	

**MEMORANDUM ORDER**

The above captioned case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff, Brian O'Toole, is a state prisoner confined at the State Correctional Institution at Fayette (SCI-Fayette). On April 19, 2007, he filed a Petition for Review in the Commonwealth Court of Pennsylvania alleging improper medical care resulting in a violation of his civil rights under both state and federal law. The named Defendants in Plaintiff's Petition for Review are the Pennsylvania Department of Corrections (DOC), SCI Fayette, and Prison Health Services Incorporated.

On May 2, 2007, Chris Meyer and Prison Health Services filed a Notice of Removal to this United States District Court of Western Pennsylvania. The Magistrate Judge's Report and

Recommendation (doc. no. 8), filed on June 28, 2007, recommended that Plaintiff's action be remanded back to state court because removal violated the unanimity requirement of 28 U.S.C. § 1441.

On July 9, 2007, Chris Meyer and Prison Health Services filed Objections (doc. no. 9) and a Brief in Support (doc. no. 10). On July 23, 2007, Plaintiff filed an Answer to the Objections (doc. no. 13) and a Motion to Recover Costs (doc. no. 12). Chris Meyer and Prison Health Services filed a Reply Brief (doc. no. 14) on July 24, 2007, and an Answer and Brief in Opposition to Plaintiff's Motion to Recover Costs (doc. nos. 15 & 16).

After review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

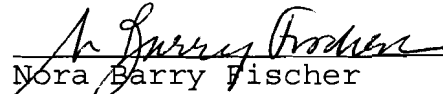
**AND NOW**, this 14 day of August, 2007;

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (Doc. no. 3) is **GRANTED** and the action is **REMANDED**, forthwith, back to state court.

**IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. no. 8) of Magistrate Judge Lenihan, dated June 28, 2007, is adopted as the opinion of the court, with the addition that Rule 1512(c) addresses original jurisdiction actions. Hence, service is governed by Rule 1514(c).

**IT IS FURTHER ORDERED** that Plaintiff's Motion to Recover Costs in the amount of \$23.52 (doc. no. 12) is **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk of Court mail a certified copy of this order and all pleadings in this action to the Commonwealth Court of Pennsylvania as required by 28 U.S.C. § 1447(c).

  
Nora Barry Fischer  
United States District Judge

cc: Lisa Pupo Lenihan  
United States Magistrate Judge

Brian O'Toole, DX-1524  
SCI-Fayette  
P.O. Box 9999  
Labelle, PA 15450-0999